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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/656,510      | 09/04/2003  | Diana Coleman        | 03-5299             | 8022             |

7590 07/16/2004  
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EXAMINER

KRAMER, DEAN J

ART UNIT PAPER NUMBER

3652

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/656,510

Applicant(s)

COLEMAN, DIANA *cd*

Examiner

Dean J. Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/4/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. Claims 2, 4, 6, 8, 10, 12, 14, 16, 18, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is confusing in that it recites a "convex" notch for pushing the rack in the oven, but all of the notches (5,6,15) are shown to be *concave* in shape in the drawings.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, as understood, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by either Efron (Design Pat. # 267,620) or Slagle, IV (Design Pat. # 256,875).
4. Claims 1, 3, 5, 7, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Saffron et al. (Design Pat. # 433,899).

The Design Patent to Saffron et al. shows a shark-shaped tool that contains all of the *structural* elements as broadly as recited in the above claims and would inherently be capable of extracting or inserting an oven rack by engaging the front bar of the rack in a notch at the mouth of the shark shape.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5-12 and 22, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over either Efron or Slagle, IV in view of Saffron et al..

Saffron et al., as presented above in section 4, shows an animal-shaped tool with its tail portion functioning as a handle while its forward portion contains notches functioning as a twisting, prying, or pulling tool.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form either the Efron or Slagle, IV tool in the general shape of an animal, such as a fish, a type of food, such as a vegetable, or any other simulated elongate object as taught by Saffron et al. so that a consumer would be more likely to purchase to the resulting tool.

7. Claims 13-21, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over either Efron or Slagle, IV in view of Saffron et al. as applied to claims 5-12 and 22 above, and further in view of Kelleghan (Design Pat. 459,173).

The Design Patent to Kelleghan shows a fish-shaped tool with an eye-hook disposed in the mouth of the fish shape.

It would have been obvious to a person having ordinary skill in the art to mount an eye-hook in the mouth portion of the resulting fish-shaped Efron or Slagle, IV tool, as

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was presented supra in section 6, as taught by Kelleghan so that when suspended on a nail or the like, the fish shape would face upwardly rather than downwardly in a more aesthetically pleasing manner.

### ***Specification***

8. The disclosure is objected to because of the following informalities: On page 4, line 15, the notch 6 is described as being "convex", but, as pointed out in section 1 above, the notch 6 appears to be concave in shape. Also, on page 2, line 7, the term "th" should be changed to --the--.

Appropriate correction is required.

### ***Drawings***

9. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "shape of a vegetable" (claim 22) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement

sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

10. Claim 14 is objected to because of the following informalities: In the first line of claim 14, it appears that the word "had" should be changed to --has--. Appropriate correction is required.


### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Jordan et al. shows a grate handling tool having a pair of notches at its distal end.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dean J. Kramer whose telephone number is (703) 308-2181. The examiner can normally be reached on Mon., Tues., Thurs., Fri. (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (703) 308-1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 7/12/04  
Dean J. Kramer  
Primary Examiner  
Art Unit 3652

djk  
7/12/04